

## PATENT COOPERATION TREATY

PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 13 JUL 2005

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Applicant's or agent's file reference 04258E01	FOR FURTHER ACTION See Form PCT/PEA/416	
International application No. PCT/B2004/001991	International filing date (day/month/year) 16.06.2004	Priority date (day/month/year) 27.06.2003
International Patent Classification (IPC) or national classification and IPC A61K7/025, A61K7/026, A45D33/00, A45D40/00		
Applicant GAMMA CROMA S.P.A. et al.		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</li> <li><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</li> </ul> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)), containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Box No. I Basis of the opinion</li> <li><input type="checkbox"/> Box No. II Priority</li> <li><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</li> <li><input type="checkbox"/> Box No. IV Lack of unity of invention</li> <li><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</li> <li><input type="checkbox"/> Box No. VI Certain documents cited</li> <li><input type="checkbox"/> Box No. VII Certain defects in the international application</li> <li><input type="checkbox"/> Box No. VIII Certain observations on the international application</li> </ul>		
Date of submission of the demand 25.01.2005	Date of completion of this report 11.07.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Krattinger, B Telephone No. +49 89 2399-	



**INTERNATIONAL PRELIMINARY REPORT  
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**Box No. I Basis of the report**

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
    - international search (under Rules 12.3 and 23.1(b))
    - publication of the international application (under Rule 12.4)
    - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

**Description, Pages**

1-4 as originally filed

**Claims, Numbers**

1-7 as originally filed

**Drawings, Sheets**

1/4-4/4 as originally filed

a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3.  The amendments have resulted in the cancellation of:
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):
4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes: Claims	1-5
	No: Claims	6-7
Inventive step (IS)	Yes: Claims	
	No: Claims	1-7
Industrial applicability (IA)	Yes: Claims	1-7
	No: Claims	

**2. Citations and explanations (Rule 70.7):**

**see separate sheet**

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**Re Item V**

Reference is made to the following documents:

- D1: US-A-6 058 942
- D2: US 2002/041788 A
- D3: US-A-4 938.675
- D4: PATENT ABSTRACTS OF JAPAN vol. 0113, no. 26 (C-454), 23 October 1987 (1987-10-23) & JP 62 111906 A
- D5: EP-A-0 432 808

None of the prior art documents discloses a process for preparing lipsticks or gloss involving steps wherein at least portion of two colours, each being in a mould, are being punched. Thus the subject matter of the method claims 1-5 is novel over the prior art.

Claims 6 and 7 define a multicoloured lipstick or gloss obtainable by the process of claims 1-5, characterised in that each portion of material has a uniform thickness. Such "product by process" claim would be admissible if the product would be new and inventive, but this is not the case for the following reasons :

Document D1 discloses lipsticks and balms having multiple distinct components of different colour wherein the different portions have a uniform thickness and where the shapes of said portions are complementary to each other and (substantially) cover the packaging container (see figures 1-3; column 3, lines 20-24; column 4, line 65 to column 5, line 11; claims 1, 8, 15, 19-22, 24, 26, 27), affecting thereby the novelty of the subject matter of claim 6.

Since the central portion protrudes beyond the external portion of cosmetic, the subject matter of claim 7 is new vis à vis the content of D1.

D2 discloses a multi composition lip balm molded in the container as to contact the wall thereof, the compositions differing by the colorant. The different portions show a uniform thickness from the top to the bottom (paragraphs 12, 13, 51, 52, 65-71, figures 1 and 6). Thus the balms of D2 destroy the novelty of the subject matter of claims 6-7.

Document D3 relates to multicolored lipsticks made of portions having different colours but showing a uniform identical thickness (column 1, lines 7-18; column 5, lines 34-40 ;figures 27, 28, 31, 32), affecting thereby the novelty of the subject matter of claims 6 and 7.

Documents D1-D3, which can all been considered as closest prior art, all disclose

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multicoloured lipsticks or balms identical to those of the present invention, so that the product by process claims, which propose to provide alternative multicoloured lipsticks and balms, cannot be seen as inventive (Art. 33(3) PCT).

Considering the process, molding and preparing complementary shape portions of lipsticks prior to insertion into a container is a concept which is already known from D1 (column 4, line 65 to column 5, line 11) and can not be seen as inventive either (Art. 33(3) PCT).

**Additional Remarks:**

The term "poured" in claim 1 is ambiguous and not clear since "poured" also implicitly comprises "sticks" of lipsticks, whereas it seems that the application only concerns lipsticks and gloss of the palette type (Art. 6 EPC). This lack of clarity originates the lack of novelty in view of the content of D2.

The application refers to the lipsticks and glosses available on the market. It would be appreciated if the application could also refer to prior art documents disclosing such lipsticks and glosses.